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July 8, 2004

The Honorable James Orenstein
United States District Court
100 Federal Plaza
Central Islip, NY 11722

Re: ***Robert Novak v. Overture Services, Inc. et al.***
Case No. 02-CV-05164-DRH-JO

Your Honor:

Defendant Google Inc. ("Google") writes to advise the Court of an ongoing discovery issue concerning plaintiff's initial disclosures. Plaintiff's initial disclosures were due to be served on Google by May 11, 2004 (14 days after the Rule 26(f) conference between Google and plaintiff). Despite repeated requests, plaintiff failed to serve his initial disclosures. On May 25, 2004, Google wrote to the Court requesting that the Court order plaintiff to immediately serve his initial disclosures or allow Google to file a formal motion seeking that relief. A copy of Google's May 25 letter is enclosed for the Court's reference.

Yesterday Google received plaintiff's initial disclosures, almost two months after they were originally due. A copy of plaintiff's initial disclosures is enclosed for the Court's reference. As the Court will see, they are facially deficient. No effort was made to identify persons with discoverable information (other than plaintiff himself), no specific categories of documents were disclosed (plaintiff merely identifies "all documents kept in the ordinary course of business") and plaintiff provides no damages computation. As the Court has observed previously, Mr. Novak is not a typical *pro se* plaintiff. From his numerous litigations he is (or certainly should be) familiar with the requirements of the initial disclosure process.

Google reiterates its request that plaintiff be ordered to provide full and complete initial disclosures immediately, and that he be precluded, pursuant to F.R.C.P. 37, from offering as evidence any information not so disclosed. We would be happy to discuss this issue further with the Court at the Case Management Conference scheduled for July 15.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ David H. Kramer

David H. Kramer (DK 4619)
Attorneys for Google Inc.

Enclosures

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Dockets.Justia.com

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GOOGLE'S MAY 25, 2004 LETTER

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May 25, 2004

The Honorable William D. Wall
United States District Court
100 Federal Plaza
Central Islip, NY 11722

Re: *Robert Novak v. Overture Services, Inc., et al.*
Case No. CV-02-5164

Your Honor:

Pursuant to Local Civil Rule 37.3(c), Defendant Google Inc. ("Google") hereby requests that the Court either order plaintiff Robert Novak to submit his initial disclosures to Google, or grant Google leave to seek such an order via formal motion. Mr. Novak has rejected and ignored informal requests that he supply the required disclosures, and they are now two weeks overdue. Unfortunately, Mr. Novak has refused even to state when the disclosures will be provided.

On April 27, 2004, Google's counsel and Mr. Novak participated in a telephone conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. During the call and again in the proposed discovery plan Google submitted to the Court, Google's counsel expressly notified Mr. Novak that his initial disclosures would be due on May 11, 2004. Google then provided its initial disclosures but received nothing in return.

On May 17, 2004, Google wrote to Mr. Novak requesting a date on which his overdue disclosures would be forthcoming. Mr. Novak rejected that request. Google followed with another letter again requesting that Mr. Novak provide a date on which the initial disclosures would be delivered. Mr. Novak did not respond at all.

Mr. Novak was clearly aware that the telephone conversation that occurred on April 27, 2004 constituted a Rule 26(f) conference between the parties based on his subsequent written correspondence. He did not object during the conference to providing initial disclosures, and any such objection would have been meritless.

Mr. Novak has, however, attempted to justify his refusal to provide initial disclosures on two grounds. First, Mr. Novak has suggested that his pro se status means that Google should not expect him to honor court deadlines. While Google has made and will continue to make reasonable accommodations for Mr. Novak in light of his pro se status (though, as this Court has remarked, he is not a typical pro se), Google does not believe that such status entitles Mr. Novak to ignore applicable rules.

Second, Mr. Novak has stated that he is entitled to provide initial disclosures to all defendants at the same time. He apparently believes that he may therefore delay making the required disclosures to Google until he is required to provide disclosures to other defendants. This too is misguided. Google and Mr. Novak have conducted their Rule 26(f) conference and Mr. Novak's initial disclosures to Google are overdue regardless of his dealings with the other defendants. This is particularly so as the Defendants in this case are not identically situated. The factual basis for Mr. Novak's claims and damages theories will differ significantly from defendant to defendant. Mr. Novak's initial disclosures to Google -- in particular his identification of relevant witnesses and documents and his damages calculation -- should be largely specific to Google. Accordingly, it makes little sense for Mr. Novak to tie his disclosure obligation to Google to those he owes to other defendants.

Mr. Novak filed this case nearly two years ago. He has had ample time to prepare his initial disclosures. There is simply no justification for his ongoing refusal to provide them. Google therefore requests that the Court order Mr. Novak to immediately provide his initial disclosures to Google or that it grant Google leave to file a formal motion seeking that relief.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DH Kr

David H. Kramer
Attorneys for Google Inc.

cc: See Attached Service List

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PLAINTIFF'S INITIAL DISCLOSURES

UNITED STATES DISTRICT COURT
Eastern District of New York
---X
Robert Novak

Plaintiff,

CV 02-5164 (DRH) (WDW)
Plaintiff's Initial
Disclosures Pursuant to
Fed. R. CIV. P. 26(a)(1)

v

Overture Services, inc., Google Inc.
Innovative marketing Solutions Inc.,
d/b/a kanoodle.com, Biochemics Inc.
d/b/a doctordog.com, John Holdefehr
d/b/a judge-for-yourself.com

Defendants

---X

Pursuant to Fed. R. IV. P. 26(a), and based on information reasonably available to him, Plaintiff Robert Novak, makes the following initial disclosures:

(a) The individual to have discoverable information to support its claims, defenses and damages.

Robert Novak
1550 Sunrise Hwy
Copiague NY 11726

Accordingly, Robert Novak hereby reserves its right to supplement this list of witnesses, to call at trial or for deposition any or different witness, including rebuttal and impeachment witnesses, or to present additional or different witnesses or testimony arises, Plaintiff also reserves the right to supplement this list and to call at trial any witness designated by Defendant. Moreover, to the extent Defendant does not call at trial any or all of its disclosed witnesses, R. Novak reserves the right to introduce portions of those witnesses' depositions at trial.

(b) Description of documents.

Documents that are kept during the normal course of business. They are in hard copy and EDI format.

Documents reguarding the Trademark Pets Warehouse®.

They are located at:

Pets Warehouse
1550 Sunrise Hwy
Copiague NY 11726

Plaintiff hereby reserves its right to provide copies of such documents at a later time, in response to specific Requests for Documents, as promulgated by the defendant in this matter.

[c] Computation of damages

Until such time that defendant provides information during discovery Plaintiff cannot compute accurate damages.

(d) Insurance

Plaintiff has no insurance related to coverage in this matter.

June 28, 2004
Respectfully submitted,

Robert Novak